

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

C.P.(CAA)/61/MB/2024
c/w C.A.(CAA)/286/MB/2023

In the matter of
Sections 230 to 232 of the Companies Act, 2013 and
other applicable provisions of the Companies Act,
2013

AND

In the matter of
Scheme of Merger by Absorption of

Americorp Business Services Private Limited [CIN: U70100MH2002PTC136458]	... Transferor Company-1/ Petitioner Company-1
Asiapacific Business Services Private Limited [CIN: U65990MH2000PTC127103]	... Transferor Company-2/ Petitioner Company-2
Gressin Constructions Private Limited [CIN: U70100MH2013PTC240561]	... Transferor Company-3/ Petitioner Company-3
Jasol Investment & Trading Company Private Limited [CIN: U51900MH1984PTC033647]	... Transferor Company-4/ Petitioner Company-4
Joindre Finance Private Limited [CIN: U65910MH2005PTC156094]	... Transferor Company-5/ Petitioner Company-5
Transpacific Business Services Private Limited [CIN: U67120MH2000PTC126770]	... Transferor Company-6/ Petitioner Company-6
Devishree Trades Private Limited [CIN: U51393MH2008PTC412838]	... Transferor Company-7/ Petitioner Company-7

Etios Realty Private Limited [CIN: U74120MH2015PTC271370]	... Transferor Company-8/ Petitioner Company-8
Hitech Realty Private Limited [CIN: U70109MH2007PTC170346]	... Transferor Company-9/ Petitioner Company-9
Montecino Constructions Private Limited [CIN: U70101MH2013PTC239314]	... Transferee Company Petitioner Company-10

(Hereinafter All Petitioners collectively referred to as 'Petitioner Companies')

Order pronounced on: 12.07.2024

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Applicants : Mr. Ajit Singh Tawar a/w
Mr. Kushal Kumar i/b Ajit Singh
Tawar & Co., Advocates.

For the Regional Director : Representative of the
RD (WR), MCA, Maharashtra.

ORDER

1. This is a joint Scheme Petition filed on 27.03.2024 under Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 seeking sanction of the Tribunal to the Scheme of Merger by Absorption of **Americorp Business Services Private Limited** ('Transferor Company-1'), **Asiapacific Business Services Private Limited** ('Transferor Company-2'), **Gressin Constructions Private Limited** ('Transferor

Company-3'), **Jasol Investment and Trading Company Private Limited** ('Transferor Company-4'), **Joindre Finance Private Limited** ('Transferor Company-5'), **Transpacific Business Services Private Limited** ('Transferor Company-6'), **Devishree Trades Private Limited** ('Transferor Company-7'), **Etios Realty Private Limited** ('Transferor Company-8'), **Hitech Realty Private Limited** ('Transferor Company-9') with **Montecino Constructions Private Limited** ('Transferee Company') and their respective Shareholders and Creditors.

2. The Petitioners submit that the Board of Directors of the Petitioner Companies have approved the said Scheme by passing Board Resolutions in their respective Board Meetings held on 13.12.2023. The Appointed Date is 1st April 2023.
3. The Petitioners further submit that the Petition has been filed in consonance with the order dated 01.03.2024 passed in C.A.(CAA)/286(MB)2023 by this Tribunal.
4. **The Rationale:**
The Petitioners submit that -
 - i. The merger of all the Transferor companies into Transferee Company aims to create single large unified operational entity within the group to mitigate potential operational and business inefficiencies.
 - ii. MCPL (Transferee Company) has 2 wholly owned subsidiaries viz Jasol Investment & Trading Company Private Limited (Transferor Company 4)

and Joindre Finance Private Limited (Transferor Company 5) which are registered with RBI as NBFC. The merger of these two companies within the group will result into reducing the number of registered non-banking financial companies (NBFCs).

- iii. This merger will benefit in having optimal and efficient utilization of capital, enhance operational and management efficiencies and to have a simplified organizational structure.
- iv. The merger of all Transferor Companies into the Transferee Company will help in achieving the larger economies of scale and would help in carrying out business operations at a very steady and efficient manner.
- v. The merger will result in quicker decision making by reduction in managerial overlaps involved in operating multiple entities, enable cost savings and effective utilization of valuable resources which will enhance the management focus thereby leading to increase in operational and management efficiency; integrate business functions; eliminate duplication and rationalization of administrative expenses.
- vi. Synchronization of efforts to achieve uniform corporate policy, greater integration and greater financial strength and flexibility for the Transferee Company.
- vii. Upon completion of the Merger, Transferor Companies will be dissolved. Consequently, there would be lesser regulatory and legal compliance obligations including accounting, reporting requirements, tax filings, company law compliances etc. and therefore reduction in administrative costs.

- viii. The Merger would result in consolidation and simplification of the overall group structure, to enable better and more efficient management, control and running of its various businesses and offering opportunities to vigorously pursue growth and expansion.
- ix. The Scheme envisages transfer of the entire undertaking of the Transferor Companies as a going concern to the Transferee Company and is in the interest of the shareholders, creditors, and all concerned.
- x. The merger will result in improved shareholder value for the shareholders of the respective companies, thus providing a stronger and wider capital and financial base for future growth/expansion of the transferee Company.
- xi. The merger will Enhance growth prospects, reduce overheads, administrative, managerial and other costs and expenditure and remove inefficiency.

5. **Consideration:**

The Petitioners submit that upon the Scheme becoming effective, and in consideration of the transfer and vesting of the Undertaking of the Transferor Companies in the Transferee Company in terms of the Scheme, the Transferee Company shall subject to the provisions of the Scheme and without any further application or deed, issue and allot securities in the following manner to all Equity Shareholders/Preference Shareholders/ Debenture Holders of the Transferor Companies whose names appear in the Register as on a record date to be fixed by the Board of the Transferee Company in the following proportion viz.:

- a. As the Transferor Company 4 and Transferor Company 5 are the wholly-owned subsidiaries of the Transferee Company, no consideration shall be payable pursuant to the Scheme of merger by absorption for the merger of the Transferor Company 4 and Transferor Company 5 with the Transferee Company, and the shares held by the Transferee Company in the Transferor Company 4 and Transferor Company 5 shall stand cancelled without any further act, application or deed.
- b. Upon the Scheme becoming effective and in consideration of the merger of the Transferor Company 1, Transferor Company 2, Transferor Company 3, Transferor Company 6, Transferor Company 7, Transferor Company 8 and Transferor Company 9, into the Transferee Company the Transferee Company shall, without any further application or deed, issue and allot;

To the Equity Shareholders of Transferor Company 1

“The Transferee Company to issue and allot 2.60 fully paid-up equity shares of Rs. 10/- (Rupees Ten Only) each for every 1000 fully paid-up equity share of Rs. 10/- (Rupees Ten Only) each/- held in Transferor Company 1”

To the Equity Shareholders of Transferor Company 2

“The Transferee Company to issue and allot 194.08 fully paid-up equity shares of Rs. 10/- (Rupees Ten Only) each every 1000 fully paid-up equity share of Rs. 10/- (Rupees Ten Only) each/- held in Transferor Company 2”

To the Equity Shareholders of Transferor Company 3

“The Transferee Company to issue and allot 0.03 fully paid-up equity shares of Rs. 10/- (Rupees Ten Only) each for every 1000 fully paid-up equity share of Rs. 10/- (Rupees Ten Only) each/- held in Transferor Company 3”

To the Equity Shareholders of Transferor Company 6

“The Transferee Company to issue and allot 1223.87 fully paid-up equity shares of Rs. 10/- (Rupees Ten Only) each for every 1000 fully paid-up equity share of Rs. 10/-

(Rupees Ten Only) each/- held in Transferor Company 6”

To the Equity Shareholders of Transferor Company 7

“The Transferee Company to issue and allot 367.83 fully paid-up equity shares of Rs. 10/- (Rupees Ten Only) each for every 1000 fully paid-up equity share of Rs. 10/- (Rupees Ten Only) each/- held in Transferor Company 7”

To the Equity Shareholders of Transferor Company 8

“The Transferee Company to issue and allot 551 fully paid-up equity shares of Rs. 10/- (Rupees Ten Only) each for every 1000 fully paid-up equity share of Rs. 10/- (Rupees Ten Only) each/- held in Transferor Company 8”

To the Equity Shareholders of Transferor Company 9

“The Transferee Company to issue and allot 687.95 fully paid-up equity shares of Rs. 10/- (Rupees Ten Only) each for every 1000 fully paid-up equity share of Rs. 10/- (Rupees Ten Only) each/- held in Transferor Company 9”

- c. *Upon the Scheme coming into effect and upon Transfer and vesting of all the Assets and Liabilities of the Transferor Company 1, Transferor Company 4, Transferor Company 5 Transferor Company 6 and Transferor Company 8 in to Transferee Company, the Transferee Company Shall without any further application or deed, allot equivalent number of debentures to the Debenture Holders of Transferor Company 1 , Transferor Company 4, Transferor Company 5 Transferor Company 6 and Transferor Company 8 without any further act, instrument or deed, will become the Debt Securities of the Transferee Company on the same terms and conditions (including same rights, interests and benefits) as applicable to the Transferor Companies and all rights, powers, duties and obligations in relation thereto shall be and stand transferred to and vested in or be deemed to have been transferred to and vested in and shall be exercised by or against the Transferee Company.*

- d. *The Debentures held by Transferor Company 4, in Transferor Company 5 shall, without any further application, act, instrument or deed stand cancelled pursuant to the merger of Transferor Companies into Transferee Company. All the rights, benefits, terms and conditions on which debentures are issued shall come to an end pursuant to cancellation of debentures held between the transferor companies. The debenture certificates, if any, in relation to the debentures held by the Transferor Companies shall be of no effect and all the debentures of the Transferor Companies shall be extinguished on the Effective Date.*
- e. *The preference share capital held by Transferor Company 7 in Transferor Company 4 and the preference share capital held by Transferor Company 6 in the Transferee Company shall, without any further application, act, instrument or deed stand cancelled pursuant to the merger of Transferor Companies into Transferee Company. All the rights, benefits, terms and conditions on which preference shares are issued shall come to an end pursuant to cancellation of preference shares held between the transferor companies. The share certificates, if any, in relation to the preference shares held by the Transferor Companies shall be of no effect and all the shares of the Transferor Companies shall be extinguished on the Effective Date.*
6. The meetings of the shareholders and the creditors of the Petitioner Companies were dispensed with vide order dated 01.03.2024 passed in CA(CAA)/286/MB/2023.
7. The Counsel appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of this Tribunal vide order dated 01.03.2024 in CA(CAA)/286/MB/2023 and they have filed necessary affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made thereunder.

8. Heard the Counsel for the Petitioner Companies and the Representative of the Regional Director (WR), MCA present. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.
9. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its Report dated 06.06.2024 making certain observations which are reproduced hereunder. In response to the observations of RD, the Petitioners have given undertakings / clarifications as follows:

Sr. No.	RD Observations	Response of the Petitioner Companies
2(a)	<i>In compliance of AS-14 (IND-AS 103), the Transferor Companies 1,2,3,4,5,6,7,8, 9 and Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 (IND AS-8) etc.</i>	<i>In so far as the observations under paragraph 2(a) of the RD Report is concerned, the Transferor Company 1, 2, 3, 4, 5, 6, 7, 8, 9 and Transferee Company undertakes to pass necessary accounting entries in connection with the Scheme as per Accounting Standard-14 or IND AS-103, for accounting treatment, to the extent applicable. The Transferee Company also undertakes to comply with the other applicable Accounting Standards, such as AS-5 (IND AS-8) etc., to the extent applicable.</i>
2(b)	<i>As per Definition of the Scheme, "Appointed Date" means 1st day of April 2023, for the purpose of Section 232(6) of the Companies Act, 2013; and.</i> <i>"Effective Date" means the last of the dates, if applicable, on which the certified or authenticated copy (ies) of the order(s) sanctioning the Scheme passed by the National Company Law Tribunal of Judicature at Mumbai for Transferor and Transferee Company are filed with the</i>	<i>In so far as the observations under paragraph 2(b) of the RD Report is concerned, the Petitioner Companies confirm and clarify as under:</i> <i>i. As per the clause 1.3 of Part A of the Scheme, "Appointed Date" means the 1st day of April, 2023 for the purposes of Section 232(6) of the Companies Act, 2013;</i> <i>ii. As per the clause 1.8 of Part A of the Scheme specifies the 'Effective Date'</i>

	<p>Registrar of Companies Maharashtra, Mumbai respectively;</p> <p>"Record Date" means the date as decided by the board of directors of transferee company for the purpose of determining the Equity Shareholder of the Transferor Companies to whom the shares will be allotted under the Scheme.</p> <p>In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.</p> <p>The Transferor companies and Transferee company may be asked to comply with the requirements as clarified vide general circular no. 09/2019 having F.No.7112/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>	<p>means the last of the dates, if applicable, on which the certified or authenticated copy (ies) of the order(s) sanctioning the Scheme passed by the National Company Law Tribunal of Judicature at Mumbai for Transferor and Transferee Company are filed with the Registrar of Companies Maharashtra, Mumbai respectively.</p> <p>iii. As per the clause 1.17 of Part A of the Scheme specifies the 'Record Date' means the date as decided by the board of directors of transferee company for the purpose of determining the Equity Shareholder of the Transferor Companies to whom the shares will be allotted under the Scheme.</p> <p>The Petitioner Companies states that the original Scheme was presented before this Tribunal on 21st Day of December 2023 by mentioning the Appointed Date as 01st April 2023. As per circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs, the Scheme was filed/ presented before this Hon'ble NCLT within one year of the Appointed Date. i.e., 01st April 2023, hence the Scheme is in compliance with the requirements of the aforesaid MCA Circular.</p>
2(c)	<p>The Transferor companies 1, 2, 3, 4, 5, 6, 7, 8, 9 and Transferee company have to undertake to comply with section 232 (3) (i) of Companies Act, 2013, where the transferor company is dissolved, the fee and stamp duty paid by the transferor company on its authorised capital shall be set-off against fees and stamp duty</p>	<p>In so far as observation made in paragraph 2(c) of the RD Report is concerned, the Petitioner Companies undertake that it shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 as regards to the combination of Authorised share capital, where the Transferor Companies will dissolved and the fees, if any, paid by the Transferor Companies on its Authorised</p>

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	<i>payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to undertake that the transferee company shall pay the difference of fees and stamp duty</i>	<i>share capital shall be set-off against any fees payable by the Transferee Company on its Authorised share capital subsequent to the Scheme of Merger by Absorption, the remaining fee, if any, after setting-off the fees already paid by the Transferor Companies on its authorized capital, will be paid by the Transferee Company.</i>
2(d)	<i>Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with 7 sub-section (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal</i>	<i>In so far as observation made in paragraph 2(d) of the RD Report is concerned, the Petitioner Companies states that the National Company Law Tribunal (NCLT) vide its order C.A.(CAA)/286/MB/2023 dated 01st day of March 2024 dispensed with the requirement of holding meeting of Equity Shareholders, Preference Shareholders (wherever applicable), Debenture holders (wherever applicable), Creditors pursuant to 100% consent given by each class of Equity Shareholders/Preference Shareholders/Debenture holders /Creditors and hence requirement of holding meeting as per Section 230 does not apply.</i>
2(e)	<i>The Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the Transferor companies 1, 2, 3, 4, 5, 6,7, 8, 9 and Transferee company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder</i>	<i>In so far as the observation made in paragraph 2(e) of the RD Report is concerned, the Petitioner Companies confirms and undertakes through this affidavit that the Petitioner Companies ensures Compliance with Section 2(1B) of Income Tax Act, 1961 and all the provisions of Income tax Act and Rules thereunder.</i>
2(f)	<i>The Hon'ble Tribunal may kindly direct the Transferor companies 1, 2, 3, 4, 5, 6, 7, 8, 9 and Transferee company to file an affidavit to the extent that the Scheme enclosed to the Company Application and the Company Petition are one and the same and there is no discrepancy, or no change is made</i>	<i>In so far as the observation made in paragraph 2(f) of the RD Report is concerned, the Petitioner Companies confirms and undertakes through this affidavit that the Scheme enclosed to the Company Scheme Application and Company Scheme Petition are one and the same and there is no discrepancy, nor any change is made.</i>

2(g)	<p><i>The Transferor companies 1, 2, 3, 4, 5, 6, 7, 8, 9 and Transferee company shall be directed u/s 230 (5) of CA, 2013 to serve notices to concerned Authorities which are likely to be affected by the present amalgamation or arrangement. Further the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme and the decision of such authorities shall be binding on the Transferor company and Transferee company</i></p>	<p><i>In so far as the observations made in paragraph 2(g) of the RD Report is concerned, the Petitioner Companies states that notices under section 230(5) of the Companies Act, 2013 have been served on timely basis to (i) Registrar of Companies, Maharashtra, Mumbai; (ii) The Central Government through the office of Regional Director, Western Region, Mumbai; (iii) Concerned Income Tax Officer; (iv) Principal Chief Commissioner of Income Tax; (v) the Goods and Service Tax Authority by First, Second, Fourth, Fifth and Tenth; (vi) The Official Liquidator, High Court, Bombay by the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Petitioner Companies (vii) Ministry of Corporate Affairs; (viii) Competition Commission of India, New Delhi; (ix) Competition Commission of India, Mumbai; (x) The Reserve Bank of India, Mumbai by Fourth and Fifth Petitioner Companies; (xi) Office of Joint Director of Industries, Mumbai Metropolitan Region by First and Sixth Petitioner Companies. The Petitioner Companies undertake that the approval of the Scheme by the Hon'ble Tribunal will not deter such authorities to deal with any of the issue arising after giving effect to the Scheme. The decision of such authorities shall be binding on the Petitioner Companies concerned unless appealed further by the Petitioner Companies in accordance with the law.</i></p>
2(h)	<p><i>The Transferor companies 1, 2, 3, 4, 5, 6,7, 8, 9 and Transferee company shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required</i></p>	<p><i>In so far as the observations made in paragraph 2(h) of the RD Report is concerned, the Petitioner Companies undertakes to comply with any such directions issued by the said Sectoral Regulatory, if received.</i></p>
2(i)	<p><i>The Transferor companies 1, 2, 3, 4, 5, 6,7, 8, 9 and Transferee company shall undertake to comply with the directions of</i></p>	<p><i>In so far as the observation made in paragraph 2(i) of the RD Report is concerned, the Petitioner Companies states that a Notice under section</i></p>

	<i>the I.T. Department and GST Department, if any</i>	<i>230(5) of Companies Act, 2013 have been served on to the concerned Income Tax Authorities and the GST Authorities (wherever applicable) through email, Registered post and Hand delivery and have yet not received any directions from the said Income Tax Authorities and GST Authorities till the date of filing of this Affidavit. Further, the Petitioner Companies undertake to comply with any such directions issued by the said Income Tax or GST Authorities, if received.</i>
2(j)	<i>That the Transferor company no. 3, 8, 9 and the Transferee Company are engaged in the business of real estate so, the Hon'ble Tribunal may kindly direct the Transferor company no. 3, 8, 9 and the Transferee Company to issue notice to RERA and also undertake to comply with the rules and regulation made under RERA Act</i>	<i>In so far as the observation made in paragraph 2(j) of the RD Report is concerned, the Third, Eighth and Ninth Petitioner Companies states that there are no ongoing projects and further undertakes to comply with the rules and regulations made under RERA Act, as and when applicable.</i>
2(k)	<i>That with respect to Transferor company no. 4 and 5 as they both are NBFC it is observed from NOC dated 27.10.2023 annexed by the Petitioner in Company Scheme Application that the RBI has directed the Transferor Companies 4 and 5 to submit the following documents subsequent to post-merger: - i. Surrender of Original CoR of Jasol Investment & Trading Co. Pvt. Ltd. for cancellation upon merger. ii. Copy of NCLT order approving Composite Scheme of Merger & Arrangement. iii. Amalgamated audited/ provisional financials of resulting company. In this regard, it is submitted that this Hon'ble Tribunal may direct the</i>	<i>In so far as the observation made in paragraph 2(k) of the RD Report is concerned, the Fourth and Fifth Petitioner Companies submits that pursuant to the No-objection certificate dated 27th Day of October 2023, the Fourth and Fifth Petitioner Companies undertakes to submit following documents to Reserve Bank of India subsequent to approval of the Scheme. a. Surrender of original CoR of Fourth and Fifth Petitioner Companies b. Copy of NCLT order approving Scheme of Merger c. Amalgamated audited/ provisional financials of the Transferee Company.</i>

	<i>Transferee Company to undertake the compliance of aforesaid observations of RBI subsequent to approval of the scheme</i>															
2(l)	<p><i>It is observed from latest MGT-7 filed for the year ending 31.03.2023 that the Transferor companies 1, 4, 5, 6,7, 8, 9 and Transferee company has the following corporate body shareholders having more than 10% shareholding: -</i></p> <table border="1"> <thead> <tr> <th><i>Name of the Company</i></th> <th><i>Name of the shareholder</i></th> <th><i>Percentage of shareholding (%)</i></th> </tr> </thead> <tbody> <tr> <td><i>Americorp Business Services Private Limited (Transferor Company no. 1)</i></td> <td><i>Joindre Private Finance Limited</i></td> <td><i>99.50</i></td> </tr> <tr> <td><i>Jasol Investment & Trading Company Private Limited (Transferor Company no. 4)</i></td> <td><i>Montecino Constructi ons Private Limited</i></td> <td><i>99.99</i></td> </tr> <tr> <td><i>Joindre Finance Private Limited</i></td> <td><i>Montecino Constructi ons Private Limited</i></td> <td><i>99.99</i></td> </tr> </tbody> </table>			<i>Name of the Company</i>	<i>Name of the shareholder</i>	<i>Percentage of shareholding (%)</i>	<i>Americorp Business Services Private Limited (Transferor Company no. 1)</i>	<i>Joindre Private Finance Limited</i>	<i>99.50</i>	<i>Jasol Investment & Trading Company Private Limited (Transferor Company no. 4)</i>	<i>Montecino Constructi ons Private Limited</i>	<i>99.99</i>	<i>Joindre Finance Private Limited</i>	<i>Montecino Constructi ons Private Limited</i>	<i>99.99</i>	<p><i>In so far as the observation under paragraph 2(l) of the RD Report is concerned, the Petitioner Companies states that the First, Fourth, Fifth, Sixth, Eighth and Ninth Petitioner Companies has duly filed form BEN-2 with Registrar of Companies (ROC) in compliance of Section 90 of the Companies Act read with rule 2A, 3 & 4 of the Companies (Significant Beneficial Owners) Rules, 2018, Form BEN-2 along with Challan is marked and attached as an Annexure A of RD Rejoinder. Further the Seventh Petitioner Company hereby submits that Americorp Capital Private Limited is holding 99.94% in the Seventh Petitioner Company however, no individual is holding more than 50% i.e. majority stake in Americorp Capital Private Limited and accordingly the provisions of section 90 of Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019 (Rules) are not applicable to Seventh Petitioner Company and hence, filing of form BEN-2, as per the provisions of Section 90 of the Companies Act, 2013, is not applicable. The Shareholding pattern of Americorp Capital Private Limited is attached as an Annexure B of RD Rejoinder.</i></p>
<i>Name of the Company</i>	<i>Name of the shareholder</i>	<i>Percentage of shareholding (%)</i>														
<i>Americorp Business Services Private Limited (Transferor Company no. 1)</i>	<i>Joindre Private Finance Limited</i>	<i>99.50</i>														
<i>Jasol Investment & Trading Company Private Limited (Transferor Company no. 4)</i>	<i>Montecino Constructi ons Private Limited</i>	<i>99.99</i>														
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	<i>(Transferor Company no. 5)</i>			
	<i>Transpacific Business Services Private Limited</i>	<i>Joindre Finance Private Limited</i>	45.88	
	<i>(Transferor Company no. 6)</i>			
	<i>Devishree Trades Private Limited</i>	<i>Americorp Capital Private Ltd</i>	99.18	
	<i>(Transferor Company no. 7)</i>			
	<i>Etios Realty Private Limited</i>	<i>Montecino Constructions Private Limited</i>	99.90	
	<i>(Transferor Company no. 8)</i>			
	<i>Hitech Realty Private Limited</i>	<i>Montecino Constructions Private Limited</i>	50	
	<i>(Transferor Company no. 9)</i>			
		<i>Jasol Investment and</i>	49.99	

	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"></td> <td style="width: 50%; text-align: center;">Trading Co. Pvt. Ltd.</td> </tr> </table> <p>Therefore, the Transferor companies 1, 4, 5, 6,7, 8, 9 and Transferee company may be directed to clarify the compliance of section. 90 of the Companies Act, 2013 r/w rules 2A, 3 & 4 of the Companies (Significant Beneficial Owners) Rules, 2018.</p>		Trading Co. Pvt. Ltd.	
	Trading Co. Pvt. Ltd.			
2(m)	<p>In the Balance Sheet of the Transferor Company no. 1, 2, 6, and 7 as on 31st, March 2023, Security Premium of Rs. 7,42,50,000/-, Rs. 15,67,95,000/-, Rs. 2,19,19,000/- and Rs. 7,12,86,080/-, respectively is showing.</p> <p>In view of the above, if agreed, Hon'ble NCLT may direct the petitioners to clarify that Income Tax Department has properly assessed the increase of share capital from time-to-time u/s. 68 of the Income Tax Act, 1961 and payment of Income Tax by existing shareholders, if they have purchased shares at lower price than issued price from above allottees or seek the reply from Income tax department about issue of share capital at high premium.</p> <p>It is further submitted that CBDT vide circular dated 17.03.2023 appointed the following nodal officer for income tax department for the Region of Mumbai & Goa, which is as follows:-</p> <p>Pr. CCIT, Mumbai Address:- 3rd Floor, Aayakar Bhawan, Maharishi Karve Road, Mumbai -</p>	<p>In so far as the observation under paragraph 2(m) of the RD Report is concerned, the First, Second, Sixth and Seventh including every Petitioner Companies states that pursuant to section 230(5) of the Companies Act, 2013 and rule 16 Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 Petitioner Companies have served notices to Income tax authority for their representations till date of filing of this affidavit and they have not raised any objections to the Scheme of Merger, and also the Petitioner Companies has been regular in filing Income tax returns and has never received any notices or queries from Income tax on Securities Premium for any past years.</p>		

	<p>400020. Phone No. 022-22017654 Email:-Mumbaipccit@incometax.gov.in.</p> <p>Since the issue falls under domain of Income Tax Department, the matter is flagged by the Directorate to seek comments of CCIT, Mumbai, if deemed fit.</p>	
2(n)	<p>That on examination of the report of the Registrar of Companies, Mumbai dated 08.05.2024 (Annexed as Annexure A-1)) that all the Transferor companies 1, 2, 3, 4, 5, 6, 7, 8, 9 and Transferee company fall within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and for representation regarding the proposed scheme of Amalgamation has been received against the Transferor companies 1, 2, 3, 4, 5, 6, 7, 8, 9 and Transferee company. Further, the Transferor companies 1, 2, 3, 4, 5, 6, 7, 8, 9 and Transferee company have filed Financial Statements up to 31.03.2023 further observations in ROC report are as under:</p>	
2(n)(i)	<p>That the ROC Mumbai in his report dated 08.05.2024 has stated that no Inquiry, inspection, investigation & prosecution is pending against the Transferor companies 1, 2, 3, 4, 5, 6, 7, 8, 9 and Transferee company.</p>	<p>The Petitioner Companies state that the observation of Registrar of Companies, Maharashtra Mumbai is self-explanatory and clarifies that no Inquiry, inspection, investigation, prosecution & complaint under Companies Act, 2013 is pending against the Petitioner Companies.</p>
2(n)(ii)	<p>This office not received valuation report, scheme, explanatory statement etc. from the all applicant companies.</p>	<p>The Petitioner Companies submits that the Petitioner Companies have served notices under Section 230(5) of the Companies Act 2013 upon Registrar of Companies (ROC). Affidavit proving service of notice to the regulatory authorities by the Petitioner Companies was filed with Hon'ble</p>

		<i>National Company Law Tribunal dated 22nd day of March 2024. Further as per the provisions of Companies Act, 2013 the Petitioner Companies were not required to serve Valuation report upon any regulatory authority hence same was not submitted earlier, copy of Valuation report is attached and marked as Annexure C of RD Rejoinder.</i>
2(n)(iii)	<i>Necessary Stamp Duty on transfer of property/Assets is to be paid to the respective Authorities before implementation of the Scheme.</i>	<i>The Petitioner Companies undertakes to pay necessary Stamp Duty on transfer of property/Assets is to be paid to the respective Authorities before implementation of the Scheme.</i>
2(n)(iv)	<i>It is submitted that as per the provisions of Section 232 (3) (1) of the Companies Act, 2013, where the transferor Company is dissolved, the fee, if any, paid by the transferor Company on its authorized capital shall be set-off against any fees payable by the Transferee company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting-off the fees already paid by the transferor company on its authorized capital, has to be paid by the transferee Company on the increased authorized capital subsequent to the amalgamation.</i>	<i>The Petitioner Companies undertake that it shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 as regards to the combination of Authorised share capital, where the Transferor Company(ies) will be dissolved and the fees, if any, paid by the Transferor Company(ies) on its Authorised share capital shall be set-off against any fees payable by the Transferee Company on its Authorised share capital subsequent to the Scheme of Merger by Absorption, the remaining fee, if any after setting-off the fees already paid by the Transferor Company(ies) on their authorized capital, will be paid by the Transferee Company.</i>
2(n)(v)	<i>Interest of the creditors should be protected.</i>	<i>The Petitioner Companies undertake to protect the interest of Creditors.</i>
2(n)(vi)	<i>May be decided on its merits</i>	<i>The Petitioner Companies state that the observation of Registrar of Companies, Maharashtra Mumbai is self-explanatory.</i>

10. The observations made by the Regional Director (WR), Mumbai have been explained by the Petitioner Companies in above para. The Representative of the Regional Director appeared and has submitted that the explanations

and clarifications given by the Petitioner companies are found satisfactory and that they have no objection to the Scheme.

11. The Official Liquidator has filed his report dated 05.06.2024 making certain observations and the Petitioner Companies have given undertakings / made following submissions:

Sr. No.	OL Observations	Response of the Petitioner Companies
16	With reference to clause No. 9.1 of the scheme it is stated that such clauses override the provision of Companies Act, 2013 namely Section 232(3)(i) which inter-alia provides that, 'if a company is dissolved, the fees paid by such company on its Authorised Capital shall be set off against any fees payable by the transferee company on its Authorised Capital. Hon'ble Tribunal may be pleased to direct Transferee Company to pay differential amount, if any, after setting off fees already paid by the Transferor Company.	With reference to paragraph 16 of the OL report, the Petitioner Companies states that the clause 9.1 of the Scheme complies with the provisions of Section 232(3)(i) of the Companies Act, 2013 as regards to the combination of Authorised share capital, where the Transferor Companies shall stand dissolved and the fees, if any, paid by the Transferor Companies on its Authorised Share Capital shall be set-off against any fees payable by the Transferee Company on its Authorised Share Capital subsequent to the merger, the deficit fee, if any, after setting-off the fees already paid by the Transferor Companies on their Authorized Share Capital, will be paid by the Transferee Company
17	As per the Financial Statement as at 31.03.2023 of 1) Americorp Business Services Private Limited (First Transferor Company) 2) Asiapacific Business Services Private Limited	With reference to paragraph 17 of the OL report, the Second and Seventh Petitioner Companies submit that for the financial year ended 31st Day of March 2023,

<p>(Second Transferor Company) 3) Gressin Constructions Private Limited (Third Transferor Company) 4) Transpacific Business Services Private Limited (Sixth Transferor Company) 5) Devishree Trades Private Limited (Seventh Transferor Company) 6) Etios Realty Private Limited (Eighth Transferor Company) 7) Hitech Realty Private Limited (Ninth Transferor Company) have negative networth. Even when the company's net worth is negative, the Financial Statements has been prepared on going concern basis. There may be breach of fundamental principle of accounting.</p> <p>Hon'ble Tribunal may require the companies to explain in this respect.</p>	<p>Total assets in Second Petitioner Company is Rs.42,40,32,000/- which is more than the liabilities of Rs.4,82,14,000/- and Total assets in Seventh Petitioner Company is Rs. 14,29,65,710/- which is more than the liabilities of Rs. 76,17,000/-and accordingly the Second and Seventh Petitioner Companies does not have a negative net worth. Hence, the net worth of the Second and Seventh Petitioner Companies is positive and requires no further comments.</p> <p>Also, the First, Third, Sixth, Eighth and Ninth Petitioner Companies submits that existing Group entities will provide directly or indirectly financial or non-financial support as it may be required to enable it to meet its obligation as and when they fall due and enable it to continue as going concern for the foreseeable future.</p> <p>Further the scheme provides for the transfer of the above said transferor companies on a going concern basis to the transferee company and post-merger the accounts of the Transferor Companies will be merged with the Transferee Company, the consolidated financial statement of the Transferee company will result in increase in financial stability and an opportunity to</p>
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		fully leverage assets, capacities, experience and infrastructure. It will also result into organisational efficiencies, economies of scale and optimum utilisation of resources which is in line with rationale of the Scheme and therefore the financial statements under consideration are prepared on a going concerned basis.
18	It is observed that the Reserve Bank of India vide its letter dated 27.10.2023 addressed to Jasol Investment And Trading Company Private Limited (Transferor Company 4) & Joindre Finance Private Limited (Transferor Company 5) have provided no objection to the proposed scheme. RBI has no objection to the proposed scheme wherein Jasol Investment And Trading Company Private Limited (Transferor Company 4) & Joindre Finance Private Limited (Transferor Company 5) will merge into Montecino Construction Private Limited (Transferee Company). A copy of letter from Reserve Bank of India dated 27.10.2023 is annexed hereto and marked as Annexure 'C'	With reference to paragraph 18 of the OL report, the contents thereof are self-explanatory and do not require any comments.

12. The observations made by the Official Liquidator (OL) have been explained by the Petitioners hereinabove.
13. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme

ultimately results in tax avoidance under the provisions of Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.

14. The approval of the Scheme will not affect the rights and contentions of all the Regulatory Authorities including Registrar of Companies and the same will remain open to take any action for non-compliance of the law and that such action, if taken would continue against the Transferee Company.
15. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public interest/policy.
16. Since all the requisite statutory compliances have been fulfilled, CP(CAA)-61(MB)/2024 is made absolute in terms of the prayer clauses of the said Joint Company Scheme Petition filed by the Petitioners. Therefore, the Scheme is hereby **sanctioned**. This Bench further orders that -
 - (i) It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Creditors and Employees.
 - (ii) The Appointed Date is fixed as 1st April, 2023.
 - (iii) All the assets and liabilities including taxes and charges, if any and duties of the Transferor Companies, shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.

- (iv) All the Transferor Companies be dissolved without winding up.
- (v) The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with E-Form INC-28 within 30 days from the date of issuance of the certified copy of the Order by the Registry.
- (vi) The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy Registrar or the Assistant Registrar, as the case may be, of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified copy of order.
- (vii) The Petitioner Companies shall comply with all the undertakings given by them.
- (viii) The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
- (ix) All concerned shall act on a copy of this Order along with the Scheme duly authenticated by the Registrar of this Tribunal.
- (x) Any person interested in the above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.

17. With the above directions, C.P.(CAA)/61/MB/2024 c/w CA(CAA)/286/MB/2023 is **allowed** and disposed of. File to be consigned to records.

Sd/-

ANU JAGMOHAN SINGH
Member (Technical)

12.07.2024/pvs

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)